



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1992

Mr. John D. "Jack" Whitlow
Criminal District Attorney
Calhoun County
P. O. Box 1001
Port Lavaca, Texas 77979

OR92-327

Dear Mr. Whitlow:

The Calhoun County Emergency Medical Services ("EMS") received a request for "copies of all incident reports involving calls to the Formosa Plastics facility in your jurisdiction," including, "all incident reports, due to accidents, toxic and non-toxic emissions causing stand-by status, transported and non-transported incidents, etc." You have submitted some representative samples of the incident reports.

You claim that compliance with the request for information would require EMS to "generate new information, compile data and perform research . . . since the data is not indexed as to response location." For this reason, you seek to withhold the incident reports. You also state that much of the information on the ambulance report is made confidential by section 773.091 of the Health and Safety Code in connection with section 3(a)(1) of the Open Records Act, which excepts information made confidential by statute from disclosure under the Open Records Act.

We will first address your argument under section 773.091 of the Health and Safety Code. Section 773.091(b) accords confidentiality to records of "the identity, evaluation, or treatment of a patient" by EMS or by a physician providing medical supervision that are created by EMS personnel or by the physician, or that are maintained by an EMS provider. However, section 773.091(g) provides that certain information on the records is not confidential, specifically, "information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient." Since the response location, Formosa Plastics, is not the patient's home address, nor a record of his "identity, evaluation, or treatment," it is not confidential under section 773.091(b). Thus, while section 773.091 allows you to withhold some

of the information on the ambulance reports, other information is available to the public.

The Open Records Act does not require you to arrange records in an order not maintained in your files. *See* Attorney General Opinion JM-292 (1984), Open Records Decision No. 145 (1976). When no confidential information is intermingled with public information, the governmental body may let the requestor examine the originals and locate the records he wants. *See* Open Records Decision No. 243 (1980). However, this procedure is not possible in this case, since the ambulance reports contain confidential information.

We assume that you maintain a file of ambulance reports indexed according to topics other than response location, and that an employee would have to inspect each report to determine which reports involved calls to Formosa Plastics. If requested records are not readily available, the Open Records Act and the cost regulations promulgated by the General Services Commission thereunder authorize you to charge the requestor for all costs related to reproducing those records, including the actual labor costs of locating and preparing the information, as well as costs of copying the records. *See* V.T.C.S. art. 6252-17a, § 9(a); 1 T.A.C. §§ 111.61-111.63. Under these circumstances, we conclude that you must provide the requested documents.

Section 11 of the Open Records Act states as follows:

A bond for payment of costs for the preparation of such public records, or a prepayment in cash of the anticipated costs for the preparation of such records, may be required by the officer for public records or the officer's agent as a condition precedent to the preparation of such records where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid.

V.T.C.S. art. 6252-17a, § 11.

You may also ask the requestor to identify the records sought more precisely, if possible, after you tell him how the records are indexed. Open Records Decision Nos. 304 (1982); 31 (1974). For example, he may be able to specify the years for which he wants the incident reports relating to Formosa Plastic.

Because prior published open records decisions answer your question, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-327.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/lmm

Ref.: ID# 15761
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cc: Mr. C. W. Leonard
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